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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. JOSE GUIDO-RUIZ, Defendant(s).	Criminal Case No. 08CR0623-LAB DATE: April 1, 2008 TIME: 2:00 p.m. Before Honorable Larry A. Burns UNITED STATES' STATEMENT OF FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES

I

STATEMENT OF THE CASE

The Defendant, Jose Guido-Ruiz (hereinafter "Defendant"), was charged by a grand jury on March 5, 2008, with violating 8 U.S.C. §§ 1326(a) and (b), attempted entry after deportation. Defendant will be arraigned on the Indictment on March 12, 2008, before the Honorable Louisa S. Porter, United States Magistrate Judge.

II

STATEMENT OF FACTS

Defendant was apprehended on January 28, 2008, by Customs and Border Protection ("CBP") Officers at the San Ysidro, California Port of Entry. There, at approximately 9:00 p.m.

that night, Defendant made application for admission into the United States via a vehicle inspection lane as the front passenger in a silver 1988 Ford Aerostar. During primary inspection before a United States Customs and Border Protection ("CBP") Officer, a Border Crossing Card (DSP-150) belonging to another person, namely, Jose Rosario Osuna-Camacho, was presented on behalf of Defendant. The CBP Officer noticed Defendant was an imposter to the document presented and, upon inspection of the vehicle, discovered several additional people concealed in the rear cargo area. Defendant and all passengers were taken into custody and escorted into secondary for a more thorough inspection.

At secondary inspection, CBP Officers used Defendant's fingerprints to perform a computerized check of Defendant's criminal and immigration history, revealing him to be a previously deported criminal alien. In a post-Miranda statement, Defendant admitted to being a citizen and national of Mexico without any immigration documents allowing him to enter or remain in the United States legally. He further admitted that he has been previously removed from the United States, and admitted that he has never applied for permission to re-enter the United States since his removal. Defendant stated he knew the driver was going to present a document on his behalf to facilitate his illegal entry. Defendant stated he was going to pay a smuggling fee of $3,600.00 USD. Defendant admitted that his final destination was Sonoma County, California.

B. DEFENDANT'S CRIMINAL AND IMMIGRATION HISTORY

Preliminary criminal history reports show that Defendant has a felony conviction in California. Defendant was convicted in 1992 in Sonoma of Lewd or Lascivious Acts with a Minor, in violation of Cal. PC § 288(a); he was sentenced to nine months incarceration followed by three years probation. Defendant was also convicted in 2003 in Santa Rosa of Failure to Register as a Sex Offender, in violation of Cal. Cal. PC § 290(a)(1)(d); he was sentenced to 24 months probation. Defendant was also convicted of misdemeanor driving under the influence in 1992.

Defendant's was last removed to Mexico on November 30, 2007.

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III

UNITED STATES' MOTIONS

A. FINGERPRINT EXEMPLARS

The United States requests that the Court order that Defendant make himself available for fingerprinting by the United States' fingerprint expert. See United States v. Ortiz-Hernandez, 427 F.3d 567, 576-77 (9^{th} Cir. 2005) (government may have defendant fingerprinted and use criminal and immigration records in Section 1326 prosecution). Defendant's fingerprints are not testimonial evidence. See Schmerber v. California, 384 U.S. 757 (1966). Using identifying physical characteristics, such as fingerprints, does not violate Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9^{th} Cir. 1969); see also United States v. St. Onge, 676 F. Supp. 1041, 1043 (D. Mont. 1987).

B. RECIPROCAL DISCOVERY

To date, the United States has provided Defendant with 82 pages of discovery, including reports of his arrest, his rap sheet, and copies of immigration and conviction documents, and one DVD. The government moves the Court to order Defendant to provide all reciprocal discovery to which the United States is entitled under Rules 16(b) and 26.2. Rule 16(b)(2) requires Defendant to disclose to the United States all exhibits and documents which Defendant "intends to introduce as evidence in chief at the trial" and a written summary of the names, anticipated testimony, and bases for opinions of experts the defendant intends to call at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

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V

CONCLUSION

For the foregoing reasons, the government respectfully requests that its motions be granted..

DATED: March 12, 2008.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/ William A. Hall, Jr.
WILLIAM A. HALL, JR.
Assistant United States Attorney